

MINUTES

February 12 - 13, 1976

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WASHINGTON, D.C. 20036

Statler Hilton Hotel
Washington, D.C.

Commission Members Present: Aines, Burkhardt, Casey, Cuadra, Dunlap, Goland, Lerner (Thursday only), Scott, Velde, Wu, and Moore (Presiding)

Staff Members Present: Trezza, Price, Reszetar (Thursday only), Thompson (Thursday only), and Cranwell

Guests Present: Alice Fite, AASL, American Library Association

John McDonald, Executive Director, Association of Research Libraries

James Rhodes, Archivist

Barbara Ringer, Register of Copyright

Roderick Swartz, Washington State Librarian

The meeting was called to order on February 12 at 9:00 a.m. by Dr. Bessie Moore. The minutes of the previous meeting were approved as reported.

Commission Appointments

Mr. Trezza reported that the White House has been actively working on the appointments and reappointments to the Commission. The last official information is that the Presidential Personnel Office has recommended, and the President has agreed, that Dr. Burkhardt be reappointed and redesignated as Chairman. No decision relative to the reappointment or replacement of Messrs Baker and Dunlap and the replacement for Mr. Crotty, who officially resigned, has been made. Final decision is expected in April.

Copyright Crisis

General Comments--Mr. Trezza reviewed the Commission's position on copyright: (1) that it is on record as being opposed to Section 108(g)2 as it is written; (2) that it

has recommended, in its resolution to the Congress that they write into the Bill a provision providing for review no later than 1980 of the library photocopy (108g) portion of the Bill; and (3) the Commission has authorized a Study on the Pattern of Library Photocopying and for conducting an experiment on a mechanism for royalty payments. The Request for Proposal (RFP) has been advertised in the Commerce Business Daily. The National Science Foundation is providing funding assistance to NCLIS on a three-to-one basis. Dr. Goland expressed his opinion that perhaps the RFP be retracted if 108(g)2 is accepted by the House Subcommittee as presently worded in S-22. Dr. Burkhardt stated that the term "systematic copying" is the crux of the problem and needs to be clarified once and for all.

Mr. Price reported on a meeting on the Essential Elements of a Copyright Clearinghouse, sponsored jointly by Information Industry Association and the Association of American Publishers, held on February 10-11, 1976, in Washington, D.C. He stated that the group is trying to develop a mechanism which would provide for prompt communication for publications, or pieces thereof, to the user and for the payment of appropriate fees, therefor, back to the copyright holder.

Three different elements discussed were: (1) information bank (where is it?); (2) provision of a document once it has been located; and (3) means of collecting fees from the users (libraries or institution and redistributing them to the copyright holders).

Mr. Price stated that Mr. Eugene Garfield, President, Institute for Scientific Information, stated that in a one-year period he never had a request for more than six copies--total demand--of any single article and that the largest check sent to a publisher was for several thousand dollars, representing 6,000 copies at 30¢ per copy. He further reported that 50% of all requests were for a single copy of an article, 25% for two copies, and 90% for three.

Mr. Trezza felt that comments made by Congressman McClellan in Congressional Record, February 6, 1976, S.1545, are important to the Commission:

"It is thus erroneous to contend that the reference to 'systematic' reproduction in subsection (g) takes away reproduction rights intended to be authorized by subsection (d). The inclusion of subsection (g) is appropriate so that the statutory provision provides a reasonable balancing of the rights of authors, and the needs of libraries and their patrons.

"Neither a statute nor legislative history can specify exactly which photocopying practices constitute the making of 'single copies' as distinguished from 'systematic reproduction.' The committee has therefore recommended that the representatives of authors, book and periodical publishers and other owners of copyrighted material meet with the library community to formulate photocopying guidelines to assist library patrons and employees. As to library photocopying practices not exempted by this legislation, the committee has recommended that workable clearance and licensing procedures be developed.

"The NCLIS has adopted a resolution urging the Congress at the present time to provide only an interim resolution of the photocopying issue, and to require a review of the statutory provisions and related matters in 1980. I not only fully support the objectives of the NCLIS, but on my initiative, the Congress already has acted to provide the mechanism for the ongoing review desired by the National Commission..."

John McDonald--Mr. John McDonald, Executive Director of the Association of Research Libraries, was invited by the Commission to present his views on the present Copyright Bill. His feeling is that the Senate is ready to adopt the Bill as is, however, the House, he believes, may not. He stated that the copyright problem is at the point where it started over a year ago. All the meetings between the publishers, authors and librarians have been held with little positive effect. The library community has suggested a revised wording to Section 108(g)2, although its preferred action is to draft the section completely. ARL's position is to preserve an interlibrary loan system which serves not so much the academic libraries, but those far from them. ARL wants to secure for the libraries in the land the best possible access to information. ARL proposed in 108(g)2 the elimination of some of the words which would seem to impinge upon a rather simple system of interlibrary loans now in effect. The words ARL has sought to eliminate are "unrelated," or "isolated," in subsection (g), "related" or "concerted" and "single" from (g)2. ARL has revised 108(g)2 to read as follows:

"The rights of reproduction and distribution under this section extends to the reproduction or distribution of a single copy or phonorecord of the same material on separate occasions but do not extend to cases where the library or archives, or its employees, engages in the systematic reproduction or distribution of multiple copies of phonorecords or materials described in subsection (d)."

A rather extensive discussion followed Mr McDonald's presentation.

Suggested NCLIS Action--After considerable discussion of the "Copyright Crisis" and Mr. McDonald's comments, Mr. Trezza suggested that the Commission write a letter to the Senate and the House stating that: (1) Section 108(g)2 is unacceptable as presently written and makes networking impossible; and (2) NCLIS urges careful consideration of our resolution--which calls for a legislative review of library photocopying by 1980.

Dr. Goland, as Chairman of the Copyright Committee, offered to prepare a draft with the help of his Committee (Scott and Lorenz) for review by the entire Commission on Friday. Dr. Cuadra requested that the record show his opposition to such a letter. Col. Aines suggested that the letter include an impact statement which would, in effect, show what would happen if either of the sides (librarians/publishers) prevail, i.e., what can we project if and when the Bill is passed with 108 in terms of the kind of services people will get? What kind of taxes are we putting on them, if any? What kind of taxes are we putting on the library community, if any? We do not have enough facts. Dr. Burkhardt stated that Congress has to be convinced of the damages the Bill will do as it now stands.

Tribute to John Lorenz

The Chairman, Commission members, and staff expressed their deep appreciation to John Lorenz for his hard work, dedication, positive and effective advice, and congratulated him on his new post as Executive Director of the Association of Research Libraries, succeeding John McDonald.

Draft Joint Resolution on the National Program Document

The draft Joint Resolution on the National Program Document was revised by the Legislative Committee yesterday. All reference to legally designating the Library of Congress as "The National Library" has been deleted. It was felt that the Joint Resolution was not the appropriate vehicle for implementation of the Commission's recommendation. The Joint Resolution, in effect, states that the National Program Document is "national policy" for developing a national program for library and information services. A revised copy of the draft Joint Resolution will be sent to each member for final perusal and comment.

Col. Aines asked to go on record as recommending that we go "straight down the middle" in trying to establish this legislation and as stating, "that even though this may be the wisest procedure to get started, I have reservations about its value in the long pull." Miss Scott requested to go on record as stating that we should have bipartisan support.

Implementation Proposal (Matrix)

Mr. Trezza assured the Commission that every project, task force and assignment being carried on in the office now is dependent on its fitting under one of the eight objectives of the national program document. One new possibility, under Objective 8(c), National Network, is a joint study with the National Library of Medicine on the Medical Library Network.

Mr. Trezza, again, requested each Commissioner to review the national program document and to suggest to the staff and Mr. Becker specific areas for research and study, suggestions for projects, etc. Constant input from all Commission members is essential.

Revision of Public Law 91-345

Mr. Trezza suggested that there is a need to amend the Commission's organic act (Public Law 91-345). Some of the changes are technical amendments and some are clarifying, based on our first five years of existence: (To be added to the statement of policy, end of paragraph)

- (1) and to that end there shall be equal opportunity of access to the Nation's library and information services;
- (2) there shall be a national program for library and information services designed to inspire, enhance and augment creativity and productivity in the United States, in order that individuals can more readily expand their learning opportunities and access to information;
- (3) through coordinated support of local, state and Federal Governments, and from private resources, library and information services, adequate to meet the needs of all local communities in the United States are to be made available;
- (4) in making such services available, consideration shall be given to the needs of library and information services of handicapped persons, senior citizens, institutionalized persons, educationally disadvantaged persons, ethnic minorities, and persons with limited English-speaking ability.

In Section 3(a) add the word "permanent" and make it clear throughout the law. In Section 3(b) a sentence will be added stating, "The Commission is authorized to obtain such other services as may be necessary through agreement with other Federal agencies." This would give us the option of dealing with other agencies besides DHEW.

Suggested wording will be added to allow Commissioners to serve when their term has expired until a successor is on board.

The issue of grants and grant-making was discussed in yesterday's Legislative Committee meeting. We need to determine if grant-making power is essential to NCLIS in getting its job done. If so, should it be stated in the law? In the national program document draft Joint Resolution all references to grant authority were deleted. There was discussion of the pros and cons of the issue. Staff favored the additional responsibility. The Chairman stated, "How many of you feel that the amendment should include a section requesting that our powers be enlarged to include grant-making powers within the functions as defined in the Act that sets us up?" The vote was unanimously negative.

Based on past difficulties with Commission staffing and the Civil Service Commission, it was decided to specify that the Executive Director be a grade GS-18. Dr. Burkhardt stated that he felt this would be to our advantage.

Additional changes were discussed. Typed copies of the proposed revised law with all the suggestions included will be sent to each Commissioner for their reaction.

Roderick Swartz

Mr. Roderick Swartz, Washington State Librarian, reviewed with the Commission some of his experiences and findings during his teaching stint in Finland and his Fellowship activities in West Germany. Some of this observations were:

--Libraries are not as well organized as in the United States;

--Library services are much slower, i.e., a student may wait 24-28 hours to borrow a particular book from a university;

--The U.S. has the best general public library service;

--Germany has the best technical research service;

--School libraries are very poor in Germany;

--Lack of regard for improvements in technology in college and university libraries;

--Telecommunications costs are regulated by the Federal Government in West Germany and are very well controlled and are much more expensive, resulting in limited telecommunication practices.

Col. Aines suggested that the Commission invite Dr. Martin Cummings, Director of the National Library of Medicine, to discuss his experiences in Germany.

In closing, Mr. Swartz reminded the Commission that there are library automation developments in the State of Washington that are of interest to NCLIS. He offered to keep the Commission informed on their developing statewide network.

Systems Considerations for the National Program

Discussion centered around several Commissioner's concern that staff (especially Mr. Price) devote more time to the systems aspect of the national program. Mr. Trezza indicated that he had talked with Mr. Price and plans have been developed for on-site visits to some of the systems such as OCLC, the Illinois Library Information Network, and the Regional Library Network in Maryland in order to gain additional background on library-oriented systems.

White House Conference

Mr. Trezza reported that a letter from Mr. Alan Kranowitz, Office of Management and Budget, to Mr. John Brademas stated:

"After careful deliberation, the Administration has decided that it will not convene a White House Conference but will rely on the NCLIS to develop and recommend plans for library and information policy. This Commission was created to provide just such advice. Utilizing regional, State and local library and information science groups, the Commission is now completing a program which should serve as a framework for future library related activities.

"The valuable role being performed by the Commission makes it unnecessary to allocate funds for the convening of a special Conference."

Public Law 93-568 gives the Commission the responsibility for the White House Conference and we are on record in favor of the White House Conference, but in light of this decision by the Office of Management and Budget, future action and statements on our part will be limited. Library and other organizations can, of course, take the initiative with the Congress and the Administration.

Visit to Taiwan

Mrs. Wu reiterated the invitation to the NCLIS members and staff by the Government of the Republic of China to visit Taiwan. After a polling of Commissioners' time schedules, it was decided that next year may prove more desirable for such a trip.

Status of Projects

Library of Congress--Minutes of the first meeting of the Advisory Committee for the study of the Library of Congress' Role in an Emerging National Network were distributed. Mr. Trezza and Dr. Cuadra felt it was a good first meeting, providing one step in the effort to build a national bibliographic system.

National Inventory--Meeting to be held April 7. Mr. Trezza asked Mrs. Moore and Mr. Casey to serve on the National Inventory Study. Both Commissioners agreed to serve.

Library Photocopying Study--The RFP was advertised in the Commerce Business Daily. Dr. Cuadra stated his interest in reading the proposals before an award is made. Mr. Trezza noted that the full Advisory Committee consisting of publishers, library representatives, and the Commission's Copyright Committee would participate in the review of the proposals. Mr. Price stated that he felt the study should be completed even if the Copyright Bill is passed to obtain the facts upon which to base decisions or suggestions for amendments.

Federal Funding for Public Libraries--The contract has been awarded to Government Studies and Systems, Inc. This is the same contractor that undertook the Alternatives for Public Library Funding for the Commission. An initial meeting with GSS is scheduled in two weeks.

National Periodicals System--A copy of the agenda for the first meeting of the Advisory Committee held February 10 in Washington, D.C., was distributed. Messrs. Aines, Cudara and Dunlap attended the meeting and each gave a brief synopsis. Eugene Palmour, serving as consultant to the study, will produce models for discussion at the next meeting (April 5). Dr. Cuadra suggested that two items for inclusion on the April agenda be: (1) cost (who pays the bill); and (2) the role of the Commissioners on the task force (conflict of interest?).

The meeting of the Commission was adjourned at 5:00 p.m.

Friday, February 13

The meeting was called to order at 8:30 a.m. by Dr. Moore.

Barbara Ringer

Ms. Barbara Ringer, Register of Copyright, stated that the Copyright Bill is the order of business in the Senate Subcommittee right now. Ms. Ringer read Senator McClellan's statement from the Congressional Record dated February 6, 1976 (see page 2 of the Minutes). After reading the statement, Ms. Ringer stated: "This statement is not to be taken at face value. The feeling in the Senate, Staff Subcommittee, and Full Committee is that the Bill will go through as it now stands, but it is perfectly clear that the librarians will not stand for the 'systematic' language and will mount a major campaign in the House. I feel that by the time this reaches a compromise conference this issue will be fairly-well settled."

Ms. Ringer went on to say that the Copyright Office believes that it would be a mistake to delete paragraph 108(g)2 completely. Instead, the meaning of fair use in the context of library photocopying in Section 108 must be clarified. As part of that process, both the language in subsection 108(g)2 and the commentary on it in the report should be carefully reexamined in the light of the real concerns of librarians. A line must be drawn between legitimate interlibrary loans using photocopies instead of bound books and prearranged understandings that result in a particular library agreeing to become the source for an indeterminate number of photocopies. To find that line and draw it clearly is one of the most difficult legislative tasks remaining in the revision program. A great deal of progress has been made thus far.

The issue is "Does a library make copies of a journal rather than subscribe?" In this regard you need to differentiate between requesting libraries and supplying libraries. The requesting library can do this if there was no "reasonable" basis for subscribing or purchasing the periodical. The Copyright Royal Tribune, which is now very firmly in the Bill, would be called upon to establish the criteria of whether or not the library could have had a reasonable expectation that the reader demand was sufficient to warrant a subscription or a purchase. Dr. Burkhardt expressed his concern that defining what is "reasonable" is equally difficult to define and does not think the market can be protected by legislation.

James Rhodes

Mr. James Rhodes, Archivist, reviewed the responsibilities and activities of the National Archives. He stated that the purpose of the National Archives is to select, preserve, and make available for use records of Federal agencies that have permanent value, either as documentation of important actions of the Federal Government or for research purposes of one kind or another. A brief question and answer session followed Mr. Rhodes' presentation. Descriptive and explanatory material was distributed.

American Indians

Dr. Moore expressed her opinion that Ms. Virginia Mathews has been a very effective consultant to the Commission in this area. On-spot visits to reservations in New Mexico, Wisconsin, and New York were recommended. It was thought that these reservations would give the Commission an insight to a variety of situations--good, bad, and indifferent. Dr. Moore polled the American Indian Committee (Goland and Wu) for possible dates for the visits. Mr. Trezza suggested that if the members of the Committee could not visit the reservations, perhaps Commissioners geographically situated could. Mr. Casey offered his assistance in the Watertown, New York, on-site visit. Dr. Moore, as Chairman of the Committee, will coordinate visits with each State Library Agency. It was agreed that at least one visit this spring is necessary to show the good intention of the Commission, and Dr. Moore agreed to work on the details.

School Libraries Legislation

Mr. Trezza presented a resolution on school libraries and learning resources to the Commission. The resolution, in part, stated: "The NCLIS requests the U.S. Congress to amend Public Law 93-380 so the law states explicitly the Congressional intent that ESEA, Title IV, State Advisory Councils should include persons representative of professional competence in school library/media service." The resolution would be sent to the appropriate Congressional leaders and to Mr. Lynn, Director of the Office of Management and Budget, as well as to all major library and information services journals, the Commissioner of Education, professional associations, etc. Mrs. Wu moved, Mr. Velde seconded, and the Commission approved the school libraries and learning resources resolution as prepared.

Mr. Trezza indicated that a Commission task force would be established to consider the role of the school libraries and media centers in the implementation of the national program.

Alice Fite

Ms. Alice Fite, American Association of School Libraries, ALA, expressed her Association's pleasure at the decision of the Commission to approve the resolution on school libraries and especially the establishing of a task force that would permit school library and media representatives to fully participate with the Commission in the implementation of the national program document.

Commissioners' Comments

Mrs. Wu suggested that a type of in-service training be provided for those Commissioners desiring knowledge in technical fields. Several options were suggested including ASIS, Recon, Smithsonian, OCLC demonstration, and Dr. Cuadra (on-line retrieval systems and services). Mr. Trezza suggested a poll of the Commissioners to determine what areas of in-service training are required. Mr. Trezza and Dr. Cuadra will discuss the possibility of such a demonstration to be tied in with the September Commission meeting.

Miss Scott discussed the possibility of the Commission looking into the problem of illiteracy, in particular, the Reading is Fundamental and the Right to Read Programs. Mr. Price offered his assistance to contact the National Institute of Education and provide a status report to the Commission. Mr. Lorenz stated that he did not feel this area is essential to the Commission's program; Dr. Burkhardt agreed but stated it would be treated as an area of interest.

Mr. Casey reported that on January 27, 1976, he was appointed by the New York State Board of Regents to its Regents Advisory Council on Libraries.

Col. Aines reported that the Office of Science and Information Service (OSIS) is now the Division of Science Information with Dr. Lee Burchinal serving as Division Director.

Dr. Burkhardt reported that he met with Dr. Stever, Head of the National Science Foundation, to discuss the problem of the relationship of the private-for-profit sector and the government, e.g., use of materials developed with taxpayers' money, what should be the Federal policy for disseminating that information, what should be the cost of these things be, etc? The possibility of NSF and NCLIS working together to study the issues being raised was discussed. Hopefully, the two agencies could get a picture of the variety and density of some of the problems from such a study. Dr. Burkhardt recommended to the Commission that this is a matter of considerable interest and of national import and ought to be a matter of concern to the Commission. In this regard, he requested Mr. Trezza to meet with Dr. Lee Burchinal to begin discussions for a study of this nature. Our position will be a complete impartiality. He asked Col. Aines to prepare a suggested start for a program of action for the next meeting.

Dr. Burkhardt stated that we have to be conservative about using travel money. Only very essential trips will be approved. Travel, if possible, should be paid by groups requesting Commission participation. A monthly report on all Commissioner's travel will be maintained in the staff office. In an effort to keep Commissioners better informed on staff activities between Commission meetings, Mr. Trezza will produce a "newsletter" or memorandum issued monthly (more often when appropriate) which will report staff activity, meetings attended, speeches presented, specific projects underway, etc.

Any questions on conflict of interest should be written in letter form to Dr. Burkhardt so that proper clearances, if necessary, can be obtained.

Budget

Our request for two research associates was approved. Mr. Trezza has interviewed a well-qualified research person who, hopefully, will accept our offer. A second person with a strong background in automation and, if possible, library experience is needed. Commissioners are requested to submit names of qualified persons to Mr. Trezza. Dr. Burkhardt requested, after the two additional research persons are on board, that a "Table of Organization" be developed outlining specific responsibilities assigned each staff person.

Oettinger Report

Mr. Trezza requested the Commissioner's advice and guidance in the publication and distribution of the Oettinger report. Messrs. Aines and Price agreed to produce a check list of the important items contained in the report. This may result in a condensed version with items of importance highlighted.

Office of Libraries and Learning Resources

Mr. Trezza briefly described his meeting with the Commissioner of Education, Terrell Bell; also in attendance were Messrs. Dick Hays, Acting Director of OLLR, and Robert Wheeler, Deputy Commissioner for School Systems. The purpose of the meeting was to personally deliver the Commission's resolutions urging the strengthening of the Office of Libraries and Learning Resources and the development of a continuing education program of directors of state library agencies and their key staffs. In addition, the Administration's current policy on categorical library programs (LSCA, HEA Title II, and ESEA--Title IVB) was discussed. Dr. Bell was aware of the National Commission's position on categorical aid. There was also some discussion on the White House Conference on Library and Information Services and Dr. Bell indicated his support.

Major result of the meeting was Dr. Bell's interest in having the NCLIS serve as an "advisory committee" to the Office of Libraries and Learning Resources. It was agreed that this should be explored further by Mr. Hays with Mr. Trezza as soon as possible. Mr. Trezza indicated that he was hopeful that more detailed information could be presented for discussion by NCLIS at its meeting in May.